IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 7046 OF 2007

Indrajit Singh Surjit Singh Sambhi.... ....Petitioner
V/s
Airport Authority of India & Anr..... ....Respondents.

Mr.E.K.Sasidharan, Adv. For the petitioner.

Mr.Girish Kulkarni with Ms.Kavita Anchan, Adv. For the respondent.

CORAM: A.P.DESHPANDE, J.
20/9/07

PC:

The Senior Manager (Aerodrome) Airport Authority of India (AAI) filed an application before the Estate Officer, AAI for initiating the eviction proceedings under the provisions of Public Premises (Eviction of Unauthorized Occupants) Act, 1971 (the "Act"). It is stated in the said application that the present petitioner is an unauthorized occupant upon part of public premises at Civil Aerodrome, Juhu bearing CTS No.940. It is then stated that the said land is owned by Government of India, Aviation Department and it is part of Aerodrome. On the said premises eviction of the petitioner was sought from the premises which are used for commercial so also residential purpose. It was emphatically contended by the respondents herein that unauthorized occupation is causing threat and endangering the safety of air crafts and thus Ministry of Home Affairs, Government of India has issued instructions in that regard for up-keeping security at the airports. The Estate Officer issued a show cause notice under section 4 of the act and after considering the reply of the petitioner passed an a order of eviction. The petitioner challenged the said order by filing misc. civil appeal before the City Civil

Court, Bombay. The Principal Judge, City Civil Court, Bombay dismissed the appeal by an order dated 23.8.07 and aggrieved thereby present writ petition is filed. In the first place it is submitted that the show cause notice itself indicates that the Estate Officer has made up his mind about occupation of the petitioner to be unauthorized. Section 4 obliges the Estate Officer to prima facie form an opinion as to whether a person is or is not in unauthorized occupation of the public premises and whether their eviction should be ordered. From the material placed before the Estate Officer by the respondent he has formed prima facie opinion about the petitioner being in unauthorized occupation and hence issued notice under section 4 of the Act. Thus it is not possible to accept the submission made by the learned counsel for the petitioner that the Estate Officer has prejudged the issue while issuing show cause notice under section 4 of the act. Said contention is without any merit and hence stands rejected. Next submission is that the premises are let out on lease by respondent to the Bombay Municipal Corporation and hence respondent cannot proceed for eviction under the act. There is no such prohibition to be found either in section 4 or 5 of the act which disentitles the respondent from evicting the unauthorized occupations from land which has been leased out. Thus this submission also needs to be rejected. It is then submitted that it is policy of the State Government to provide alternate accommodation to unauthorized occupants who are in possession since prior to 1.1.95. It is obvious that the State Government's policy about rehabilitation of encroachers prior to 1.1.95 cannot and does not bind the Union of India. Lastly it is submitted that other unauthorized occupants on the land of respondent have been provided with alternate accommodation with a view to rehabilitate them at some other place. No such contention was raised before the authorities below and has not been dealt with. It is for the

first time submitted during the course of arguments. Hence it is not possible to adjudicate the said contention. However it shall be open for the petitioner to approach the respondent with a request in that regard if there exists such a policy. I grant four weeks time to the petitioner to vacate the premises. The eviction order shall not be executed for a period of four weeks from today. With these observations Writ petition stands dismissed.

20.9.07